87 1899

No.:

Supreme Court, U.S.
FILED
APR 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987.

MASHUQ A. QURESHI, M.D. Petitioner

v.

NATIONAL SAVINGS AND TRUST COMPANY
SECURITY NATIONAL BANK
TELEPHONE CORPORATION OF AMERICA | Respondents

Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Exhibit 1

MASHUQ A. QURESHI, M.D.,

Plaintiff,

v.

NATIONAL SAVINGS & TRUST COMPANY, et al.,

Defendants.

Civil Action No. 82-3673

FILED FEB.10,1983

MEMORANDUM AND ORDER

This matter is before the court on the motion of defendant NS&T Bank to dismiss for failure to state a claim upon which relief can be granted. For the purposes of decinding such a motion, the court must take as true all the allegations of the complaint. Plaintiff alleges that he is the victim of a scheme which defrauded him of some

$67,500. Although it is not immediately clear from the pleadings, plaintiff appears in fact to be complaining about two separate transactions.

1. Sale-leaseback of telephone equipment.

Plaintiff, a physician, was looking for tax shelters when he engaged in a questionable transaction in which he bought telephone equipment from one Richard J. Gordon for $47,500 and then promptly leased the equipment back to Gordon. The purchase price was financed by a personal loan from NS&T Bank to plaintiff, secured by the equipment. Gordon shortly thereafter skipped town, and is now reportedly in federal prison in Connecticut.

Plaintiff argues that the bank is liable to him for the amount of the loan because the bank knew about Mr. Gordon's shady background and had a duty to warn

plaintiff about doing business with Gordon. The Bank denies any such knowlege and insists that, in any event, it owes no fiduciary duty to plaintiff.

It is well-settled that the relationship between a depositor and his bank is usually one of debtor-creditor, and creates no fiduciary relationship.

Bank of Marin v. England, 385 U.S. 99 (1966). Though plaintiff may be chagrined that he was no better protected by the bank at which he has been a depositor for twelve'years, the bank owed him no legal duty to do so. Accordingly, plaintiff's claims against NS&T for the $47,500 loan must be dismissed.

2. $20,000 check to Medac General Partnership II

On or about April 1, 1981, plaintiff wrote a check for $20,000 to the order of

"Medac General Partnership II", drawn on the account of plaintiff with NS&T. "Medac II" was a partnership controlled by Mr. Gordon. Plaintiff gave the check to Gordon, ostensibly to purchase shares in Medac II. Instead, Gordon endorsed the check over to "Medtronics, Inc.", yet another Gordon creation, and deposited the check with the Medtronics account at Security National Bank, a co-defendant. Security National Bank then, of course, presented the check to the payor bank, NS&T, for collection. After verifying the authenticity of plaintiff's signature, NS&T debited plaintiff's account in the amount of $20,000.

Plaintiff argues strenuously that both banks are liable to him in the full amount of the check for having accepted what he terms the improper endorsement of Mr. Gordon on the check he intended to go to Medac II,

Medac II, argues plaintiff, did not even have a bank account with NS&T until some six weeks later.

At least with respect to NS&T, plaintiff again misconstrues the obligation of the bank. As payor bank, NS&T had only to verify the authenticity of the signature of the drawer of the check, plaintiff. NS&T was entitled to rely on the warranty of Security National Bank that the endorsement on the check was proper.

See D.C. Code §28:4-207 (1981). The existance or absence of a Medac II account at NS&T, at whatever time, is irrelevant to this motion. Accordingly, plaintiff's claims for the $20,000 lost on the check to R.J. Gordon must also be dismissed.

In accordance with the foregoing, it is this 10th day of February, 1983,

ORDERED that the motion of defendant NS&T Bank to dismiss for failure to state

a claim upon which relief may be granted is granted; and it is further

ORDERED that plaintiff's claims against defendant NS&T Bank are hereby dismissed.

Thomas Flannery

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Exhibit 2

MASHUQ A. QURESHI, M.D.

Plaintiff

vs.

#2: SECURITY NATIONAL BANK

Defendant

FILED JUL.26,1984

Civil No. 82-3673

Filed Jul.26,1984

James F.Davey, Clerk

JUDGMENT ON THE VERDICT

(For Defendant)

This cause having been tried by the Court and a Jury, before the Honorable Thomas A. Flannery, Judge presiding, and the issues having been duly tried and the Jury having rendered its verdict; now therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff Mahuq A. Qureshi, M.D.

take nothing on the complaint against the defendant Security National Bank

and that the said defendant (s) have and recover costs from the said plaintiff.

JAMES F. DAVEY, Clerk

Dated: July 26, 1984 By James F. Davey

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

MASHUQ A. QURESHI, M.D.	Filed
Plaintiff	August 30,1985
TELEPHONE CORPORATION OF AMERICA	James F.Davey,
AKA TELCOA	Clerk
Defendant	CIVIL
	NO. 82-3673

Exhibit 3

JUDGMENT ON THE VERDICT

(For Plaintiff)

This cause having been tried by the Court and a Jury, before the Honorable THOMAS A. FLANNERY, Judge presiding, and issues having been duly tried and the Jury having duly rendered its verdict; now, therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff MASHUQ A. QURESHI, M.D.

have and recover of and from the defendant TELEPHONE CORPORATION OF AMERICA, AKA TELCOA the sum of Seventeen Thousand,Four Hundred Forty Dollars $17,440.00,

JAMES F. DAVEY, clerk

Dated: 08/30/85 By: _____

Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Exhibit 4

MASHUQ A. QURESHI, M.D.,

Plaintiff,

v.

TELEPHONE CORPORATION OF AMERICA,

Defendant.

Civil Action No. 82-3673

FILED OCT.29, 1985

M E M O R A N D U M

This matter comes before the court on defendant's motion for judgment notwithstanding the verdict and in the alternative, for a new trial or remittitur, or plaintiff's motion for interest, costs, attorney fees, and investigation fees, and on defendant's motion to strike plaintiff's motion. For the reasons stated below, all the above motions are denied.

I. Background

This case came to trial in August of 1985. On the evidence presented, defendant sold various items to Richard J. Gordon, including a MITEL SX-200 telephone equipment system pursuant to a conditional sales contract that reserved title in the equipment with defendant until full payment was made.

Subsequently, plaintiff engaged in a sale lease-back arrangement with Gordon whereby plaintiff bought the MITEL SX-200 telephone system from Gordon and then leased it back to Gordon for use in Gordon's office. After Gordon's business fell apart, defendant repossessed, refurbished and resold the telephone equipment.

Plaintiff claimed that defendant's repossession of the telephone equipment from Gordon was an unlawful conversion of plaintiff's property. Defendant claimed that

as secured party, it had a superior interest in the proceeds received from the resale, which could be applied not just to the debt on the MITEL SX-200, but to an "open account" held by Gordon with defendant.

To establish defendant's right to the telephone equipment, various facts were brought out at the trial concerning the existence of defendant's security interest, security agreement, and type of account with Gordon. To establish plaintiff's right to the telephone equipment, various facts were brought out about plaintiff's purchase of the telephone equipment and plaintiff's relationship with Gordon.

After a week of trial, the court issued instructions to the jury, the jury deliberated, and a verdict was returned awarding $17,440 to plaintiff.

II. Discussion

Defendant seeks a different judgment, a new trial, or a remittitur of the amount awarded plaintiff. Most of defendant's arguments in favor of a new judgment or trial, however, are misplaced in that they attempt to show that by law defendant had a security interest superior to plaintiff. Such a finding is unnecessary given the jury's verdict. As shown by the verdict form, the jury found that defendant did have a right to repossess and resell the telephone equipment. The verdict form read:

> Do you find that TelCOA had a right to repossess and resell the telephone equipment, but only to apply the proceeds of the resale to both the outstanding debt Gordon owed on the MITEL SX-200 and telCOA's costs in repossession and resale?
>
> Yes X
>
> No _____

While it is not for this court to determine the process of deliberation that led to this conclusion, obviously the jury found that defendant had some sort of security interest in the equipment that was superior to any interest plaintiff had in preventing defendant's repossession.

The crux of defendant's concern, therefore, must be with the jury' finding that the security interest only allowed defendant to apply the proceeds of the resold equipment to the outstanding debt on <u>that</u> equipment (plus costs in repossession and resale), and not to the "open account" defendant sought to prove at trial. Close review of the evidence presented at trial shows that, viewed in a light most favorable to plaintiff, there is a reasonable basis for the jury's finding.

As a matter of law, the "article two" security interest shown by defendant to

exist arose from the sale of the MITEL SX-200; that security interest secured any outstanding debt on that telephone equipment, not on any cumulative debt owed by Gordon to defendant. The parties agreed that defendant initially sold the telephone equipment to Gordon for $26,288. Plaintiff introduced evidence that Gordon paid to defendant accepted from Gordon $24,000 on that debt (Plaintiff's Exhibit 19). Evidence was also heard from John Eaglin, director of operations for defendant, that repossession costs were approximately $800-$1,000, refurbishing costs were approximately $4,700-$4,800, and installment costs were approximately $7,300-$7,400. The jury, after deducting the debt still owed defendant on the equipment, and after weighing the reasonableness of the costs of repossessing, refurbishing and reselling

the telephone equipment, decided that, after completing the lawful satisfaction of its security interest, defendant was enriched at plaintiff's expense in the amount of $17,440.

Returning this surplus to plaintiff is in complete compliance with the law in this district regarding a secured party's right to dispose of collateral after default. D.C. Code Ann. §28:9-504. While the jury's exact computation of this amount must remain uncertain, it cannot be said as a matter of law that the jury was clearly in error in determining this amount.

Defendant's specific objection ot the second jury instruction is also misplaced and insufficient grounds for a new judgment or new trial. It was clear to the jury that since the debt was not yet fully paid, no valid title had passed from defendant to Gordon. It was also clear (through the

answer of the court to a question posed by the jury during deliberation) that plaintiff himself had no security interest in the property.

Therefore, it was necessary to indicate to the jury that absent a security interest by defendant, or after satisfaction of such a security interest, it was still possible for plaintiff to have a claim to the goods under an article two transfer of title pursuant to the voidable title doctrine. D.C. Code Ann. §28:2-403(1). All the ensuing jury instructions dealt with whether a security interest existed, whether a security agreement existed, and what significance such outcomes would have under article nine.

III. Conclusion

The defendant's motion for judgment notwithstanding the verdict, or in the

alternative, for a new trial or remittitur, is denied.

Plaintiff's motion for interest, costs, attorney fees and investigation is likewise denied. This renders moot defendant's motion to strike plaintiff's motion, and therefore it too is denied.

An appropriate Oder accompanies this Memorandum,

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Exhibit 5

MASHUQ A. QURESHI, M.D.

Plaintiff,

v.

TELEPHONE CORPORATION OF AMERICA

Defendant.

Civil Action

No. 82-3673

FILED

OCT.29, 1985

O R D E R

Upon consideration of defendant's motion for a judgment notwithstanding the verdict, and in the alternative, for a new trial or remittitur, plaintiff's motion for interest, costs, strike plaintiff's motion, the oppositions thereto, and the entire record herein, it is, by the court, this 29 th day of October, 1985,

ORDERED that defendant's motion for judgment notwithstanding the verdict, and in the alternative, for a new trial or

remittitur, is denied; and it is further

ORDERED that plaintiff's motion for interest, costs, attorney fees and investigation fees is denied; and it is further

ORDERED that defendant's motion to strike plaintiff's motion for interest, costs, attorney fees, and investigation fees is denied.

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

MASHUQ A. QURESHI, M.D.	Exhibit 6
Plaintiff,	
v.	Civil Action
RICHARD J. GORDON, et al.	No. 82-3673
Defendants	FILED
	AUG. 15, 1986

MEMORANDUM OPINION

AND

REPORT AND RECOMMENDATION

This matter comes before the United States Magistrate based on Order of the Court (Flannery, J.), dated December 13, 1985, for a hearing on damages allegedly owed to the plaintiff, Dr. Mashuq A. Qureshi, who has proceeded pro se in this litigation, by Mr. Richard J. Gordon, the Court having entered an Order on December 16, 1985, determining that effective service had been

made on the defendant, Richard J. Gordon, in California, pursuant to 13 D.C. Code §423 et seq. (1981) and ordering the Clerk of the Court to issue a default against Mr. Gordon for his failure to appear and to answer the complaint. 1/

An evidentiary hearing was held before the undersigned United States Magistrate on February 13, 1986. Plaintiff appeared pro se and gave testimony on his own behalf. Also during the hearing the plaintiff produced two (2) additional witnesses and introduced seventeen (17) exhibits. The defendant did not appear personally or through counsel.

1/ It is noted that the Court referred the matter to the Magistrate even prior to the Clerk entering the default.

The Magistrate has since again reviewed his hearing notes, the exhibits received in evidence and the entire court record. Also extensive legal research has been conducted on the subject of equipment leases and the method for computation of damages for breach thereof of rental payment obligations during theterm of the lease. Based upon this review, the Magistrate enters the following findings of fact and conclusions of law.

For the reasons set forth hereinafter, the Magistrate recommends judgment be entered against the defendant, Richard J. Gordon, and for the plaintiff, in the sum of ONE HUNDRED FIFTY THOUSAND, NINE HUNDRED THIRTY-FOUR DOLLARS AND FOURTEEN CENTS ($150,934.14) as the appropriate quantum of damages in this case as of September 1, 1986.

GENERAL BACKGROUND

Dr. Mashuq A. Qureshi seeks $67,500 in

damages, plus interest at two (2) percent above the prime rate, punitive damages, as well as legal fees and costs from the defendant Richard J. Gordon, an individual with whon he transacted several business dealings in 1981. 2/ Dr. Qureshi has alleged that Richard J. Gordon had breached two (2) separate and distinct contracts in which they had entered in 1981.

After several unsuccessful attempts to serve Mr. Gordon, who currently resides in California, both certified and registered mail, the Court (Flannery, J.) found that effective service had been made on Mr. Gordon. Thus, on February 6, 1986, the Clerk of the Court entered a default against the defendant, Richard J. Gordon for his failure to answer

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2/ Dr. Qureshi's original complaint was filed against National Savings & Trust Company(NS&T), Security National Bank and Telephone Corporation of America (TELCOA) for their alleged (FN #2...)

the amended complaint (Docket No.141). Thereafter the evidentiary hearing was held on February 13, 1986, pursuant to the Order of the United States Magistrate of January 20, 1986, furnishing notice thereof, which was mailed to Richard J. Gordon, c/o Pacific Financial Institute, Suite #600, 10100 Santa Monica Boulevard, Los Angeles, California, 90067, both by First Class Mail and Certified Mail, return receipt requested, addressee only (Docket NO. 137). The certified letter was returned "notify sender of new address:

(...FN #2)

involvement in the business dealings between Dr. Qureshi and Richard J. GOrdon. On April 20, 1983, Dr. Qureshi filed an amended complaint, pursuant to an Order of the Court, filed April 13, 1983, to add Richard J. Gordon as a defendant. This report and recommendation concerns on Dr.Qureshi's claims against Richard J. Gordon on the amended complaint.

Pacific Basin Enter

1880 Century Park East #806

Los Angeles, California 90067".

The first class letter was not returned. It may be presumed that it was forwarded by the U.S. Postal Service to the defendant and was received. Cf. Legille v. Dann, 544 F.2d 1 (D.C. Cir.1976).

FINDING OF FACTS

1. Dr. Mashuq A. Qureshi, who currently resides at 611 South Carlin Springs Road, Arlington, Virginia, testified that in the Spring of 1981, he negotiated several business deals with Mr. Richard J. Gordon, President of "R. J. Gordon Corporation."

2. Dr. Qureshi agreed to purchase two (2) shares in a partnership, the Medac General Partnership II. (Testimony of Dr. Mashuq A. Qureshi). For the purchase of the two (2) partnership shares on or about April 1, 1981,

Dr. Qureshi gave Mr. Gordon a check for $20,000.00, drawn on Dr. Qureshi's MAQ Associates' account at NS&T in Washington, D.C. (Dr. Qureshi's testimony and Plaintiff's Exhibit #1).

3. On or about April 2, 1981, Mr. Gordon deposited the check in an account held by Medtronics, Inc. at the Security National Bank (SNB) in Washington, D.C. as evidenced by the endorsement on the back of the check. (Plintiff's Exhibit #1). Robert D. Willey, Jr., Vice-President of NS&T, also testified that the check was, in fact, deposited in the Medtronics, Inc.'s account at NS&T. Dr. Qureshi testified that Medtronics, Inc. was another company run by Mr. Gordon

4. Security National Bank (SNB) returned the check to NS&T made payment on the check. (Testimony of John N. Littlewood, Senior Vice-President of SNB)

5. Both Dr. Qureshi and Mr. Willey testified that the Medac General Partnership II account was not opened by Richard J. Gordon until May 26, 1981. Mr. Gordon had the sole authority to sign checks for the partnership account as Managing Partner. (Plaintiff's Exhibit #2).

6. Dr. Qureshi testified that shortly thereafter Richard J. Gordon left town and never gave Dr. Qureshi his two partnership shares or any other evidence of a ownership interest in the partnership.

7. Dr. Qureshi and Mr. Gordon also agreed to a sale and lease back arrangement concerning a MITEL SX-200 Computerized Telephone System. (Dr. Qureshi's testimony). According to the terms of the agreement, negotiated in March, 1981, Dr. M.A. Qureshi would purchase the equipment from Richard J. Gordon for $47,500.00 and then Dr. Qureshi would rent the same equipment back

to the "R. j. Gordon Corporation" at $1,400.00 per month plus applicable taxes per month. The equipment lease agreement, dated March 19, 1981, was to run for one-hundred and twenty (120) months. This agreement was signed by Dr. M.A. Qureshi, as lessor, and by R.J. Gordon, President, The R. j. Gordon Corporation, lessee, 4231 42nd Street, N.W., Washington, D.C. 20016. 3/ (Dr. Qureshi's testimony; plaintiff's exhibit #5).

8. On or about April 1, 1981, Dr. Qureshi gave Mr. Gordon a check in the amount of

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3/ The evidence establised that #The R. j. Gordon Corporation" was in fact R. J. Gordon and that he dominated its activities. Thus, the Court is justified in piercing the corporate veil and imposing liability directly on Richard J. Gordon. See Plaintiff's (FN#3...)

$47,500.00. 4/ payable to "The R. j. Gordon Corporation" with the notation, "Purchase: MITEL SX-200 Telephone System", drawn on

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(...FN#3)

Exhibit #17, letter by R. J. Gordon, in which refers to "my company", R. j. Gordon & Company. See also Transcript at trial on August 28,1985, filed July 8, 1986, testimony of Kenneth Schwarzwald of TELCOA at pages 398, 406, 409, 410, 413 and 423A, all indicating that Richard J. Gordon and R. j. Gordon & Company were treated as one and the same.

4/ Plaintiff's Exhibit #12 indicates that the cost of the system was $55,000.00. Exhibit #12, an invoice to Dr. Qureshi, not only purportedly indicates that Dr. Qureshi purchased the system directly from TELCOA instead of from Richard J. Gordon, but also indicates a bill date of January 9, 1981, a date long before the purchase order was even

(FN #4...)

Dr. Qureshi's MAQ Associates' Telephone System", drawn on Dr. Qureshi's MAQ Associates' account at NS&T. (Plaintiff's Exhibit #3).

(... FN #4)

signed and before the loan arrangement was set up. (See Plaintiff's Exhibits ## 3, 5 and 17). The document purportedly signed by Joyce Francala, an employee of TELCOA, and by Mr. Gordon, neither of whom testified at the hearing. It thus appears that Mr. Gordon may have represented himself as the agent for Dr. Qureshi, perhaps without his knowledge. Moreover, during the trial against TELCOA in this case, Kenneth Schwarzwald, the Chief Executive Officer fot TELCOA, testified that the document was not signed by an authorized agent of TELCOA and, in fact, Ms. Francella's name was spelled incorrectly on the document. (FN #4 ...)

9. As testified by Mr. Willey and as evidenced by the endorsement on the back of the $47,500.00 check, Mr. Gordon deposited the check into "The R. j. Gordon Corporation" account (Account Number #0614701001) on or about April 2, 1981. (Plaintiff's Exhibit #3). Mr. Willey also testified that NS$T honored the check on or about April 3, 1981.

(...FN #4)

(Trial Transcript at 397-398, filed July 8, 1986). He further testified that the purchase price by Mr. Gordon was $24,800.00 plus tax. (Trial Transcript at 394, 403, filed July 8, 1986). It appears that TELCOA apparently repossessed the equipment because of a dispute between it and Mr. Gordon over the payment of taxes. Mr Gordon stated in his August 23, 1985 letter that the equipment was sold to Dr.Qureshi at a retail price of $47,500.00.

10. In order to pay Richard J. Gordon, according to the testimony of Dr. Qureshi, he borrowed $47,500 from NS&T, using the Equipment Lease Agreement between himself, as lessor, and the R. j. Gordon Corporation, as lessee, as well as the telephone equipment itself as collateral.
(Dr. Qureshi's testimony; Mr. Willey's testimony and Plaintiff's Exhibits ## 9, 10 and 11).

11. Subsequently, Dr. Qureshi assigned all of his interest in the lease to NS&T for so long as Dr. Qureshi was indebted to the bank. (Dr. Qureshi's testimony; Mr. Willey's testimony and Plaintiff's Exhibit #6).
As required by the Equipment Lease Agreement the R. j. Gordon Corporation consented to the assignment of the lease and agreed to make all one-hundred and twenty (120) payments directly to NS&T. The consent to assignment of the lease was attested to by Ms. Phyllis

H. Archer, Mr. Gordon's former secretary and bookkeeper. (Dr. Qureshi's testimony; Mr. Willey's testimony, Plaintiff's Exhibit #7; and Trial Transcript at 389, filed July 8, 1986).

12. The assignment of the lease was also placed on the public record in Fairfax County, Virginia. (Mr. Willey's testimony; Plaintiff's Exhibit #8). In the financing statement, Dr. Qureshi is designated to secured party and the R. j. Gordon Corporation is designated as debtor (Plaintiff's Exhibit #8). Financing statements were also filed covering NS&T's secured party interest in the lease and the telephone equipment. (Plaintiff's Exhibits ##9 and 10).

13. Although the lease agreement and the consent to assignment of the lease state that R. j. Gordon Corporation's monthly rental payment was $1,400.00, the Equipment Lease Agreement termed this sum as an

"estimated rental." 5/
Dr. Qureshi testified that the true rental payments were $1,050.00 per month. The United States Magistrate accepts the $1,050.00 as the correct payment because the $1,400.00 was an estimated rental amount.

14. The Magistrate closely observed the plaintiff, Dr. Mashuq A. Qureshi, during the hearing on damages and found him to be a credible witness. His testimony was fully consistent throughout and he appeared most sincere in his factual testimony. Further, the exhibits he offered in evidence were fully consistent with his oral testimony and corroborated his testimony in all intrinsic details. Further, the testimony as to how Richard J. Gordon had handled the checks

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5/In the terms and conditions of the lease, it is indicated that the rental amount listed was subject to change under certain conditions. See Plaintiff's Exhibit #5.

in issue and the accounts involved. 6/

CONCLUSIONS OF LAW

1. In light of the defendant Richard J. Gordon's failure ot appear and failure to respond to the pleadings in any manner, default judgment can be properly entered against him. Federal Rules of Civil Procedure, Rule 55. See also Jackson v.

6/ A copy of this Report and Recommendation shall be sent to Richard J. Gordon at the latest address indicated in the text by both first class mail and certified mail, return receipt requested, deliver to addressee only. Should he object to the findings of fact, the conclusions of law, or the RECOMMENDATION, he shall file OBJECTIONS no later than 4:00 P. M., August 27, 1986.

Beech, 636 F.2d 831 (D.C. Cir. 1980); Al-Kazemi v. General Acceptance & Investment Corporation et al., Dist. Ct., D.C. C.A. No. 85-3465, April 22, 1986, 114 W. L. R. 1577 (August 4, 1986). From Plaintiff's Exhibits ##17 and 17A, and their contents, it is clear that Mr. Gordon has had some notice of this controversy, at least as to the telephone equipment system.

2. The United States Magistrate finds that Dr. Qureshi is entitled to recover $20,000 for defendant Richard J. Gordon's for two (2) shares of the Medac II General Partnership. Under 28 D.C. Code §3302, Dr. Qureshi is entitled to interest from April 1, 1981 to date at the rate of six (6) percent per annum.

Thus, as to this matter, Dr. Qureshi is entitled to $26,400.00 as of August 1, 1986, representing $20,000.00 as principal, plus interest of $1,200 per annum, or $100.00

per month. 7/

3. Further, the United States Magistrate finds that Richard J. Gordon is liable for $91,834.14 due to his breach of the second contract with Dr. Qureshi in failing to make the monthly payments pursuant to the Equipment Lease Agreement at issue in this case. This amount reflects the one-hundred and eighteen (118) rental payments discounted to present value as of the date Dr. Qureshi was entitled to declare a default and accelerate all of the rental payments due under the lease.

According to Term and Condition Number 21 of the Equipment Lease Agreement signed by Richard J. Gordon and Dr. Qureshi,

---

7/ If the judgment is not formally entered until September 1, 1986, the sum should be increased by $100.00 so that the total would be $26,500.00.

Plaintiff's Exhibit #5, all rents became due within ten (10) days after the lessee failed to pay any monthly rent. The lease was executed on March 19, 1981. Dr. Qureshi testified that Mr. Gordon made only two (2) payments of $1,050.00 each for a total of $2,100.00. The United States Magistrate concludes that this payment covered the rent for two (2) months, March 19, 1981 through May 19, 1981. With ten (10) day allowance for payment from May 19, 1981, the Magistrate concludes that all rents became due and payable on May 29, 1981. However, for ease of initial calculation the Magistrate will make a minor adjustment and will use the date of June 1, 1981 as the starting date for the computations hereinafter made.

4. If reasonable, rental acceleration clauses in agreements involving equipment leases have been inforced by several courts.

See, e. g. Walter E. Heller & Company v. Video Innovations, Inc., 730 F. 2d 50 (2d Cir. 1984). It is necessary, however, to discount future rentals to present value. See, Heller Financial, Inc. v. Burry, 633 F. Supp. 706 (N.D. I11 1986). See also Lake River Corp. v. Carborundum Co., 769 F.2d 1284, 1290 (7th Cir. 1985) relied on in Heller Financial, Inc., that it would be wrong to accelerate payment of all future rentals without any discount to present value, which would be more in the nature of a penalty, not to be enforced, rather than as liquidated damages. Cf. Davy v. Crawford, 147 F. 2d 574 (D.C. Cir. 1945). In the case at bar, Richard J. Gordon, as a result of piercing the corporate veil of "The R. j. Gordon Corporation" has been determined to be liable for one hundred and eighteen (118) monthly rental payments until March 19, 1991, which would total

$123,900.00. But it would be inappropriate to give Dr. Qureshi the sum of $123,900 now in September, 1986, when had the Equipment Lease Agreement been fully performed, he would not have received this total sum until March 19, 1991. Thus, this sum must be discounted to present value. Since Dr. Qureshi had the right to declare a default as of June 1, 1981, we have chosen that date as the date when all the rent became due and the date to which the $123,900.00 sum should be discounted. Discounting at six (6) percent, compounded, per annum back from March 19, 1991 to June 1, 1981 gives us a present value as of that date of $67,576.38, which is set out in table below:

March 19,		Discount
1991	$123,900.00 x .06	$7,434.00
1990	116,466.00 x .06	6,987.96
1989	109,478.04 x .06	6,568.68
1988	102,909.36 x .06	6,174.56
1987	96,734.80 x .06	5,804.08
1986	90,930.72 x .06	5,455.84
1985	85,474.88 x .06	5,128.49
1984	80,346.31 x .06	4,820.77
1983	75,525.54 x .06	4,531.53
1982	70,994.01 x .06	3,417.71(9months, 18 days)
		$56,323.62

June 1,

1981 $ 67,576.38 ($123,900 - $56,323.62 = $67,576.38).

For an excellent discussion of this approach, see In Re United American Financial Corp., 55 B. R. 117 (Bkrtcy. 1985) and authorities cited therein.

Next, interest at six (6) percent per annum

must be computed back under 28 D.C. Code §3302 from June 1, 1981 until September 1, 1986. With prejudgment interest computed on the sum of $67,576.38, the total comes to $91.788.93. The computation is set foth in the following table:

	Interest	Balance
1981-1982	$4,054.58	$71,630.96
1982-1983	4,297.86	75,928.82
1983-1984	4,555.73	80,484.55
1984-1985	4,829.07	85,313.62
1985-1986 (3 Months June-Sept.)	5,118.82	90,432.44

If we use a thirty (30) day month add back in three (3) days for May 29 to June 1, at a daily interest rate of $15.07 this would give us an additional sum of $45.21, for a total sum of $91,834.14.

5. Although Dr. Qureshi received an award from TELCOA in his suit against it in the amount of $17,440.00 the United States

Magistrate concludes that that amount should not be used asa set-off against the amount Dr. Qureshi is to awarded against Richard J. Gordon. Mr Gordon and TELCOA committed two separate and distinct wrongs against Dr. Qureshi. TELCOA wrongfully repossessed the telephone equipment and precluded Dr. Qureshi from repossessing the equipment as he was entitled todo as a secured party with priority. See D.C. §28:9-501- 28:9-504. In addition, Mr. Gordon, in allowing the repossession to occur by not protecting the collateral, engaged in wrongful conduct and should not be permitted to benefit from that wrong. Cf. First Pennsylvania Banking and Trust Co. v. Liberati, 422 A. 2d 1074 (Pa. 1980). Thus, Dr. Qureshi is entitled to full recovery from both TELCOA and from Richard J. Gordon and Mr. Gordon is not entitled to the benefit of any setoff.

6. Further, based on the several indicia of fraud in Richard J. Gordon's activities in his dealings with Dr. Qureshi, the United States Magistrate concludes that Dr. Qureshi is entitled to recover punitive damages. Based on the initial partnership transaction involving the purported purchase of two (2) shares of Medac II General Partnership for $20,000.00, the telephone equipment system, and the other circumstantial evidence of fraud, the Magistrate concludes that the additional sum of $25,000 as punitive damages is a reasonable sum.

Mr. Gordon's activities were in callous and wanton disregard of Dr. Qureshi's rights in investing in Mr. Gordon's business enterprises. See Al-Kazemi v. General Acceptance & Investment Corporation, et. al supra. See also Rainbolt v. Johnson, 669 F.2d 767, 769 (D.C. Cir. 1981).

7. According to term and condition number 21 of the lease, the lease provides that if the lessee defaults on the rent, the lessee "shall pay lessor all costs and expenses, including reasonable attorneys' fees incurred by lessor in exercising any of its rights of remedies hereunder." Therefore, the United States Magistrate finds that Dr. Qureshi, in exercising his right to sue Mr. Gordon under the lease, is entitled to investigators' fees and expenses and attorneys' fees in the amount of $7,600.00 based on Dr. Qureshi's testimony that he incurred these out of pocket expenses in endeavoring to locate Richard J. Gordon, to serve Mr. Gordon in this lawsuit, and in prosecuting this case. Based on the record in this case, these expenses do not appear to be excessive.

CONCLUSION

Based on the foregoing, the Magistrate concludes that Dr. Qureshi is entitled to the following if we project judgment to be entered on or about September 1, 1986:

1) Medac II General Partnership conversion of funds. $ 26,500.00

2) Breach of Equipment Lease Rental Agreement - 118 months - Rents discounted to peresent value, plus six (6) percent per annum from June 1, 1981 amounts to $91,788.93

If we readjust back to May 29, 1981 allowing for three (3) additional days of interest at $15.07 per day, this would be $45.21, increasing the total sum to $91,834.14. 91,834.14

3) Punitive damages 25,000.00

4) Investigators' and attorneys' fees and costs 7,600.00

$150,934.14

Based on the above calculations, it is hereby RECOMMENDED that a default judgment be entered on or about September 1, 1986 in the total sum of $150,934.14.

August 15, 1986

Date

ARTHUR L. BURNETT, SR.

United States Magistrate

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

MASHUQ A. QURESHI, M.D.,	Exhibit 7
Plaintiff,	Civil Action
v.	No. 82-3673
RICHARD J. GORDON, et al.,	FILED
Defendants.	AUG. 26, 1986

ORDER AND JUDGMENT

This matter comes before the court pursuant to the Memorandum Opinion and Report and Recommendation of the United States Magistrate regarding damages owed plaintiff. This court ordered the Magistrate on December 13, 1985 to conduct an investigation regarding damages after it was determined that service had been made on defendant. Default was entered against defendant on February 6, 1986. The

Magistrate then conducted a hearing and received documentary and oral evidence. Plaintiff testified on his own behalf, but defendant continues not to appear personally or by counsel.

The court has carefully considered the excellent report and recommendation of the Magistrate. Plaintiff has established two transactions for which he is entitled to damages. The Matistrate had computed the present value of each amount on the date when plaintiff was entitled to payment from defendant. Interest from the date until the present has been added, as well as punitive damages and costs and fees. The court concludes that all these amounts are justified.

The court adds $100 to the recommended amount to take account of interest accrued during the month of August 1986 on the delinquent repayment of $20,000 to plaintiff.

Therefore, upon consideration of the Magistrate's report, and the entire record herein, it is, by the court, this 20th day of August, 1986.

ORDERED, ADJUDGED and DECREED that plaintiff is entitled to a judgment of $151,034.14 from defendant, to be paid no later than September 1, 1986.

Thomas Flannery

UNITED STATES DISTRICT COURT

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 87

MASHUQ A. QURESHI, M.D.

v.

NATIONAL SAVINGS AND TRUST COMPANY

et al

PROOF OF SERVICE

The petitioner certifies under the penalty of perjury that on 05/19/88, 3 copies of this sup appendix were mailed postage prepaid first class to:

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